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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,767	02/07/2005	Peter Kastenmayer	3712036-00444	7519
29157	7590	04/19/2010	EXAMINER	
K&L Gates LLP			MEHTA, HONG T	
P.O. Box 1135				
CHICAGO, IL 60690				
			ART UNIT	PAPER NUMBER
			1784	
			NOTIFICATION DATE	DELIVERY MODE
			04/19/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary	Application No. 10/523,767	Applicant(s) KASTENMAYER ET AL.	
	Examiner HONG MEHTA	Art Unit 1784	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-11,26 and 27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-11,26 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>January 22, 2010</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

This office action is in response to applicant's remarks and amendments filed on January 11, 2010. Amended claims 1, 3, 6-11, 26 and 27 are under examination. Claims 4 and 24 are cancelled. Claims 2, 5, 12-23, 25, 28-32 are withdrawn.

Election/Restrictions

Applicant has amended the claims to include non-elected species isoflavones. This limitation was not previously considered since it was considered a non-elected species. New search and consideration of the new limitation of isoflavone in amended claims 1-3, 6-11, 26 and 27 necessitated new grounds of rejections.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. **Claims 1, 3, 6-11, 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meiji Seika Kaisha (JP 7308172 A, Abstract translation) in view of Shlyankevich (US 5,424,331) and further evidenced by Kirschmann (Nutrition Almanac, 1973).**

5. **Regarding claims 1, 6, 7, 8, 10, 26 and 17**, Meiji Seika Kaisha discloses a baked cookie composition to promote calcium absorption within a person. The composition comprising 70 grams of egg powder and 6 grams of calcium carbonate. Calcium carbonate has approximately 2.4 grams of calcium in the calcium carbonate. Egg powder is considered to be egg whites and egg yolks. Kirschmann teaches egg compositions comprise 31 grams of whites (64.6%) and 17 grams of yolk (35.4%), thus based upon a given composition of an egg, Meiji Seika Kaisha is considered to disclose egg whites with amount of 45.22 grams. Meiji Seika Kaisha discloses a ratio of egg whites to calcium at range of about 19 (45.22 grams/2.4grams).

6. **With regard to claims 1, 6 and 27**, Meiji does not discloses the exact range of ratio of egg whites to calcium as cited in the instant claims however, it would have been obvious to one of ordinary skill in the art to increase the amount of egg powder in a

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cookie formulation depend upon one's preference for texture and amount of added nutrient provided by eggs in cookie food product.

7. Meiji Seika Kaisha is silent on isoflavone in the cookie composition. However, Shlyankevich discloses a dietary composition comprising phytoestrogen (isoflavones) and calcium (col. 3, lines 15-30). Shlyankevich teaches the composition as a dietary supplement for preventing bone disorder such as osteoporosis (col. 2, lines 25-36). Additionally, Shlyankevich discloses dietary compositions comprising phytoestrogen (isoflavones) may be mixed with dietary wafers such as cookies (col. 5, lines 37-41). It would have been obvious to one of ordinary skill in the art to use Shlyankevich's dietary composition as a food additive in Meiji Seika Kaisha's cookie composition because Shlyankevich clearly teaches dietary the supplement comprises isoflavones for preventing bone disorder such as osteoporosis (col. 2, lines 25-36) and is useful with Meiji's cookie formulation for improve calcium absorption within the body.

8. **Regarding claims 3**, Meiji is silent on egg whites containing ovalbumin, ovotransferrin and ovomucoid, however ovalbumin, ovotransferrin and ovomucoid are considered naturally occurring proteins in egg whites.

9. **Regarding claim 9**, Meiji discloses milk, wheat flour, sugar and margarine which are considered functional ingredients.

10. **Regarding claim 11**, Meiji discloses the calcium and egg powder as active ingredients in dry powder form.

Response to Arguments

11. Applicant's arguments with respect to claims 1-3, 6-11, 26 and 27 have been considered but are moot in view of the new ground(s) of rejection. The amendment to the claims necessitated the new grounds of rejection above.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HONG MEHTA whose telephone number is (571)270-7093. The examiner can normally be reached on Monday thru Thursday, from 7:30 am to 4:30 pm EST..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Htm

/Jennifer C. McNeil/

Supervisory Patent Examiner, Art Unit 1784